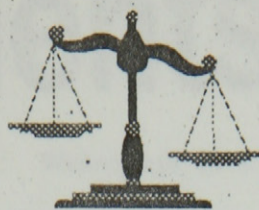


# Quid Navi



Volume XV, No. 3

UNIVERSITÉ MCGILL FACULTÉ DE DROIT  
MCGILL UNIVERSITY FACULTY OF LAW

September 19, 1994  
le 19 septembre, 1994

## THE JUDGEMENT

Ed Vandenberg  
NAT IV

The TRIAL was the same length it always is - just under four months. As usual, three months of that time was taken up by the JUDGE's instructions to the litigants. "Be organized," he says in his final address, as if we would really contemplate trying to be disorganized. "Focus on the main issues and, above all, be clear and to the point." We've heard it a million times; all of the judges say the same thing. If these points are so important, if these are what the JUDGE is going to base his DECISION on, why is it that we have never been trained in these things?

You have three hours to make your case. The last few days have been pretty rough, trying to cram anything

you can into your head, and once that is full, you put everything else into a summary. A veteran of three years, you learned long ago to ignore the JUDGE when he advises that you not use someone else's summary. There seems to be no correlation between the JUDGMENT and how you prepared, so it seems logical to take the simplest approach. The JUDGES don't like it that everyone prepares this way, but the SYSTEM encourages it, and hey, you get rewarded if you follow the SYSTEM.

So you state your case, and then you wait. For the first few days you're dogged by nagging doubts. Was I organized? What exactly were the main issues? Did I write too much or not enough? But as the days pass, you forget. You have other cases to present and other things to do.

And then, about two months later, the JUDGMENT. It's delivered by phone, apparently from another planet. You sweat and begin to tremble. Isn't it funny that you still harbour a hope that the JUDGMENT will reflect the way you thought you performed? But let's face it, too many times in the past you thought, "Yes, I was organized and to the point," and found that the JUDGMENT was against you. The only consolation is that often you thought "Man, I really bombed that one," and found that the JUDGE decided in your favour. So, it all seems to average out somehow. It's frustrating, but hey, that's the SYSTEM.

And then you hear the JUDGMENT. B MINUS. Four

(Continued on page 9)

## Advice to Future Lawyers

Mr. Justice Brian Sully  
Visiting Judge

Australia.

Those of you who are masters will know, and those of you who are pupils will soon learn that into the life of every busy Barrister there must fall from time to time not as the song suggests, "a little rain", but instructions which are to the following effect:

"Herewith our file. Will Counsel please advise and in due course appear."

(Continued on page 6)

Mr. Justice Sully, Visiting Judge at McGill University Faculty of Law, discourses on the vicissitudes of life at the Bar. The following is an address by Mr. Justice Sully for a dinner marking the completion by a class of newly-admitted Barristers of their post admission Bar Reading Course in

In This Issue

Dans ce numéro

ANNONCES	2
EDITORIAL	3
Quoi de neuf?	4
JODYTALK	4
Tom the Aussie	9
My View	10
ELAM	10

# Announcements / Annonces

## PATRICIA ALLEN MEMORIAL LECTURE

Professor Carol Smart from the University of Leeds will deliver the 1994 Patricia Allen Memorial Lecture on September 26, 1994 at 17h00 in the Moot Court of New Chancellor Day Hall. Her topic will be: "Losing the Struggle for Another Voice?: The Case of Family Law."

## LEGAL THEORY WORKSHOP

The first Legal Theory Workshop will be held on September 30, 1994 at 12h30 in Room 202 of New Chancellor Day Hall. Professor Philip Soper of the University of Michigan Law School will speak on "Law's Normative Claims."

## NOTES FROM THE OFFICE OF UNDERGRADUATE STUDIES...

**International Development Law** is **CANCELLED**. If you are still registered in this course, use MARS to drop it from your record before the end of the ADD/DROP period.

The **ADD/DROP** period is extended to Wednesday 21st September. Courses dropped from Thursday 22nd September to Sunday 25th September will appear on your record with a "W" - course dropped with permission. Any changes made after 22nd September are subject to a late course change fee of \$25 - see your Fee Information Booklet.

**Upper Canada Bar** applications will not be available before the end of October. Watch the electronic Bulletin Board for notice of their arrival.

Professor David Johnston and Mr. S. Handa will teach a **Research Seminar** in the Winter term entitled **Copyright and Information Technology**.

Course No.:	389-508/9B (05)
Language:	English
Prerequisites:	None
Seminar:	Yes
Evaluation:	Paper (75%), class participation (25%)
Enrolment:	25
Credits:	2

Day/Time: Wednesdays, 16:30-18:30

This course will examine the law of copyright as it applies to new technologies such as databases, multimedia databases, computer programs, digital-audio, computer-created works and as a possible means of regulating content on the proposed information highway. A thorough examination of the law of copyright will be provided. Previous study of intellectual property law is not required. A brief introduction to digital and computer technology will also be provided. Although the course will focus primarily on Anglo-American copyright law, some attention will be paid to international conventions in this field as well as to continental systems of copyright. The foundations and underlying policy goals of copyright will be examined from an economic perspective and their compatibility in light of the application of copyright law to new technologies will be gauged. A high level of student participation is expected.

There is still lots of space in **Family Law I**. The instructor, Me Eva Petrus, is a well-regarded family law practitioner with a special interest in mediation. Me Petrus is teaching this **semi-obligatory** course each Tuesday in the first term, 16:30-19:30.

Once the installation of E-mail for student use is complete, announcements and information previously contained in this column will be available to you on the system. **Remember to check your E-mail daily.** Until this sophisticated communications system is functioning, continue to scan this space for information you will need to help you survive Law School.

Previous threats to the contrary, we still have papers and essays from last term. You are invited to check the boxes to see if yours is there. Papers and essays unclaimed by Friday 23rd September will be shredded!!

You may notice that first year students have newly designed I.D. cards. If you have an old one, don't worry - your existing card is still good and does not have to be replaced.

This is the first reminder of the year directed to B.C.L.II and LL.B.II students - you have been automatically registered in the four-year National Programme. If you wish to opt out of the National Programme, please complete the green form available from the USO and give it to Isabella.

## Project Prometheus

Interested in doing a little volunteer work this year? I am organizing, with an already established foundation called "Project Prometheus" (founded by young Montreal lawyers), for a group of McGill Law students to be matched as "mentors" with individual high school kids around Montreal who are at high risk of dropping out of school. Your commitment would be just 2 hours once a week and it would be a great opportunity for you to encourage and motivate kids who might not otherwise be exposed to such special attention. If this interests you - please call Leslie at 284-1211 and leave a message.

## ATTENTION: STUDENTS ENROLLED IN THE LEGAL CLINIC COURSE

All students enrolled in the Fifth Term Legal Clinic Course (496-431A Sec 01) please attend a **compulsory** administrative meeting on **either** Thursday, 15 September **or** Thursday, September 22, both at 4 p.m. in Room 203 N.C.D.H. Students who are not yet enrolled in the course but are interested in doing so are invited to attend.

## GRADUATE STUDIES:

Graduating this year? Interested in doing graduate studies in law? If you do wish to do graduate work at another university, please contact Professor Jeremy Webber at 398-8947. If you are graduating this year, you should contact Professor Webber as soon as possible because some of the application deadlines are very early (the first is on September 21) and the applications take time to put together. Professor Webber has considerable information on scholarships for study abroad, and would be happy to advise you on potential destinations and sources of funds.

**Quid Novi** is published weekly by students at the Faculty of Law of McGill University, 3661 Peel Street, Montréal, H3A 1W9 (Tel: 398-4430). Production is made possible by support of the Dean's office and by direct funding from the students. Les opinions exprimées sont propres à l'auteur. Toute contribution n'est publiée qu'à la discrétion du comité de rédaction et doit indiquer l'auteur ou son origine.

This newspaper is printed on 100% recycled paper.

Rédacteur-en-chef/ Editor in chief:  
Jay Sinha

Rédacteur de production/Production Editor:  
TBA:

Rédactrice Française/French Editor:  
Laurence Detière

Directeur administrative/ Administrative Director:  
Barbara Frederikse

Directeur de l'information/ News Director:  
Alpana Garg

Rédactrice de corrections/Copy Editor:  
Julie Carter

Dactylographie/Typing: Hilary Williams

Production:  
Mike Akkawi, Adam Atlas, Laurence Detière, Martin Ertl, Liz Freedman, Barbara Frederikse, Alpana Garg, Trevor McCann

# EDITORIAL: On ne badine pas avec l'amour

En cherchant désespérément un sujet d'éditorial, je me suis référée à celui de Jay du 5 Septembre qui suggérait une panoplie de sujets, dont les péripéties rocambolesques de la famille royale qui, m'a-t-il reprécisé oralement, n'est un sujet qui ne doit être utilisé qu'en dernier recours: en cas de manque d'inspiration, briser la vitre. J'ai donc, dans un moment de carence créative, sombré jusqu'à me pencher sur les aventures, ou plutôt les mésaventures de ceux dont la vie théoriquement privée semble être d'intérêt public, ou tout au moins, intéresse le public.

Diana fait-elle des coups de téléphones menaçants? Que faisait son époux-en-titre nu devant une fenêtre? La question la plus probante demeure: qu'est-ce que ça peut nous faire?

Bien souvent, la vie privée de ceux qui nous gouvernent (je ne parle plus de la famille royale!) est dévoilée (pas de la même façon que Charles) et critiquée. De plus, on leur demande de se justifier. En effet, les politiciens sont poursuivis par les scandales. Et ces scandales sont de deux ordres. Ceux qui sont vraiment de nature professionnelle, comme la corruption par exemple, puis ceux qui sont d'ordre strictement personnels du style "il est allé faire de la voile avec qui????". Les premiers sont peut-être pertinents car ils affectent de façon directe le gouvernement du peuple, qui élit des représentants dans un système qui se veut l'antithèse de la tyrannie et de l'élitisme. Mais à quoi est dû le second type de scandale, qui force parfois la démission de ceux qu'il concerne? Certes, à la soif du public

de connaître les "potins", voire à un certain voyeurisme, car rien ne semble faire couler plus d'encre que les scandales politiques. Un politicien est photographié avec une femme autre que la sienne, et les guerres, famines... passent à l'arrière-plan pour donner place à un débat de mœurs... Seulement, ce qui, au départ, n'est rien de plus que des affaires personnelles, devient une affaire d'État, face à un public qui estime qu'ayant élu son représentant, il en est le juge, une place que seul Dieu occupait dans les régimes où le souverain détenait un pouvoir divin.

Il ne s'agit pas de discuter qu'un souverain doit, comme tout autre citoyen (en théorie), respecter la loi qui incorpore une grande partie de nos mœurs, mais au-delà de cela, a-t-on vraiment le droit d'exiger une infaillibilité?

Pourquoi exigeons nous d'un politicien une perfection que nous ne demandons pas de quelque autre personnalité publique? Des chanteurs ou acteurs sont notoirement drogués, ou violents, enregistrent des disques de prison, et pourtant leur produit est reconnu comme brillant, et le public s'apitoie sur leur sort. Pourquoi alors le public n'accepte-t-il pas qu'un gouverneur soit à la fois imparfait d'un point de vue personnel, et très bon dirigeant. Ces choses sont-elles vraiment incompatibles?

Jean-Jacques Rousseau était, paraît-il, un homme assez difficile à tolérer. Il restait des mois invité chez des gens. Pique-assiette ou pas, ses idées avaient du mérite, et elles ont changé le monde, fondant les idées auxquelles nous souscrivons encore

aujourd'hui. L'histoire est remplie d'hommes et de femmes dont les mœurs personnelles douteuses n'ont rien enlevé à leurs qualités uniques et prisées de grand politiciens, voir Talleyrand parmi tant d'autres.

On ne badine donc peut-être pas avec l'amour, et pourtant on badine trop avec celui des dirigeants qui ne sont pourtant pas des dieux, ni même des demi-dieux (ceci n'a rien à voir avec les opinions politiques). Ils sont humains, et ont souvent eu au moins trente ans de vie privée avant d'entrer dans l'arène de la politique et de la vie publique.

Peut-être est-ce parce que nous n'acceptons pas que l'on nous dise: "fais ce que je dis et pas ce que je fais." Ou peut-être est-ce qu'avec le recul du temps on pardonne les fautes personnelles, mais que dans le moment présent elles ne sont pas acceptables. Peut-être est-ce aussi parce que nous attendons de nos dirigeants qu'ils incarnent les qualités auxquelles nous aspirons. Peut-être est-ce que le public n'a rien de mieux à faire que de les surveiller.

Mais, s'ils sont discrets, si les photographes arrêtent de se dissimuler parmi les buissons, et s'ils font leur travail correctement, doit-on perpétuellement se perdre dans des débats inutiles et burlesques pour savoir si un président trompe sa femme (son mari) si cette dernière s'en accommode? Et si elle (il) ne s'en accommode pas, c'est leur problème et non le nôtre.

La question demeure donc de savoir jusqu'où doit aller l'image que projette le dirigeant?

Laurence Detière

**VEUILLEZ BIEN NOTER! LA DATE LIMITE POUR LES SOUMISSIONS AUX FINS DE PUBLICATION DANS L'ÉDITION D'UNE SEMAINE DONNÉE EST LE LUNDI DE LA SEMAINE PRÉCÉDENTE, à 17h00. AUCUNE EXCEPTION NE SERA FAITE A CETTE REGLE!!!!**

**Les soumissions peuvent être effectuées par courrier électronique**

**([<<quid@lsa.lan.mcgill.ca>>](mailto:quid@lsa.lan.mcgill.ca) ou tout simplement [<<quid>>](mailto:quid) si vous êtes branchés au réseau de la Faculté de droit), ou au moyen de disquettes ou transcriptions dactylographiées ou écrites à la main. Les disquettes MacIntosh peuvent être traduites en format IBM à la salle des ordinateurs.**

**ATTENTION! THE DEADLINE FOR SUBMISSIONS FOR PUBLICATION IN A GIVEN WEEK IS THE MONDAY OF THE PRECEDING WEEK, AT 17:00. NO EXCEPTIONS WHATSOEVER!!!**

**Submissions may be made by E-mail ([quid@lsa.lan.mcgill.ca](mailto:quid@lsa.lan.mcgill.ca) or just [quid](mailto:quid) if you are on the Law Faculty network), disk, typed or handwritten copy. MacIntosh disks can be translated to IBM format at the computer lab.**

# Quoi de Neuf?, ou, le Quid Novi se gallicise.

Laurence Detière

BCL II

(Rédactrice Française/French Editor)

Si vous êtes intéressés à écrire pour le Quid en Français, n'y pensez plus! Faites-le. Si vous n'avez pas d'idées, et que la famille royale ne vous passionne pas comme sujet (de toutes façons, c'est déjà pris! voir *éditorial*), voici quelques idées: répondez à Jody, traduisez Jody Talk, posez des questions à Jody (comme, par exemple, pourquoi sa rubrique s'appelle toujours Jody Talk, et non Quid Jody ou Jody Novi, comme il l'avait promis l'an dernier). D'un autre côté, celui des rédacteurs (en l'occurrence moi), et des pauvres étudiants qui ont beau écrire régulièrement (encore par hasard moi) sans être dotés d'une rubrique titrée (narcissique) préfèrent Jody Talk comme titre plutôt que l'exploitation d'une partie du nom de

notre (votre) journal. En effet, d'abord c'est Quid Jody, puis c'est le putsch! Puis c'est encore plus de publicité gratuite pour la clinique d'aide juridique. Et où pourront se faire valoir les autres clubs (Société de droit international, Quid Novi, équipes de sports...)? Cette énumération n'est qu'à titre d'exemple, et n'a rien à voir avec ma participation dans ces merveilleux et passionnants clubs où l'on s'amuse beaucoup avec des gens très sympas, car jamais je ne me permettrais de faire ce que Jody a fait dans le premier paragraphe de son Jody Talk <<Jody Advertises>> du 5 Septembre). Tout ça pour dire qu'avec Randi H. qui a l'intention de nous doter d'une *autre* rubrique (et l'intention étant maintenant publique, elle va être obligée de le faire...Thanks Randi, the Quid loves you! and waits for you!)...en anglais, on attend des contreparties

francophones. Ceci dit je n'ai rien contre l'anglais, au contraire. En tant que rédactrice du français, je tiens à veiller que le Quid contienne de cette langue poétique, et surtout, je voudrais ne plus être la seule à devoir pondre des articles en français. Je voudrais me remettre à faire comme l'an dernier et alterner mes articles entre les deux langues officielles (bien que je ne sois pas en période d'élection). Je cherche donc des contributions en français afin que le Quid représente mieux le caractère bilingue de la faculté, et afin que cela me permette d'écrire en anglais, et permette à tous les anglophones qui peinent en français de pratiquer un peu leurs talents de lecteurs francophones, avant d'être contraints et forcés d'attaquer Baudouin. J'attends donc avec impatience vos articles!

*Jody-masquerading-as-a-Quid-editor*  
Note: The Quid Novi editors would like to announce that they are accepting donations for the Ambassador Raoul Duke Scholarship. The scholarship is to be awarded to any third year student in the faculty of law, with a unisex name, dark hair, and a penchant for sarcastic commentary.

It's about the end of the third week of school so I went to buy my books yesterday. In preparation for this I first checked my bank account to ensure that I have enough money to do this. Well I didn't, but I bought the books anyway. It's a race to see who gets paid first... Hydro, Cable, my landlord or the McGill Bookstore. I'd have the cash except the Government hasn't released the approval for

my loan money as yet.

I have to borrow money in order to pay for my tuition and other academic expenses, but what's the need for tuition anyway. The Quebec government pays a certain amount of money to McGill for each student who attends the school. Unfortunately, this is such a paltry sum that they have to charge us tuition on top of it. Even with the tuition McGill charges it doesn't manage to break even, so it comes up with these penalty fees, such as late registration, late payment fees, graduation fees, replacement student ID card, fees for transcripts and so forth. However, this still doesn't quite manage to cover the cost of all the wonderful things that McGill gives us: endless bureaucracy, surly professors, pretty flowers in front of the Arts building, the new law library, etc. So, while we're in school they call our parents and beg them for money, and after we graduate they beg us for money.

Let's back up for a

minute though. I said that I was waiting for a loan approval. Normally, one of the things that a bank looks for when it loans someone money, is that the person has a steady source of income. I have no such steady source, yet the Government seems pretty willing to underwrite my loans. My parents think this is a great idea, since they would never do something as silly as lending money to me. Tuition, books, utilities, beer at Coffee House... it all adds up. How much does it add up to, I don't know. I'm going to be a lawyer not an accountant. But I digress. It's not as silly to lend me money as my parents might think. Right now, I'm a starving student with a bad attitude, a wardrobe that consists of rumpled T-shirts, and I have to pay people to listen to me rant and rave. In a couple of years, when I have to pay these loans back, I'll be a lawyer with a bad attitude, a wardrobe that consists of rumpled suits, and people will pay me money to rant and rave. If you don't think so, check out first year Constitutional Law.

In addition to loans, most students

(Continued on page 5)

# JODY

(Continued from page 4)

receive a bursary for attending University. A bursary is essentially an allowance, kind of like what your parents used to give you when you were a kid, before they wanted to introduce you to the joys of "making your own money." I don't know how it went in your house, but in mine I had to earn my allowance. I had chores that I had to do around the house. Every time I finished a chore it got credited to my allowance for the next week. If I finished all my chores I got the full amount. However, if I was a bad, irresponsible boy and didn't finish the chores, my parents would dock part of my allowance.

Now governments on the whole are pretty much like parents. They tell you what you can and can't do, what you can and can't buy, all the while telling you how lucky you are for having them as parents instead of, let's say, Mr. and Mrs. China. About the only thing they let you do is say what you want, except in Quebec, where they only let you say what you want if you say it twice as loud in French... but I digress. The Quebec Government doesn't like to give bursaries to people for being industrious. It prefers to reward people for being lazy. Last summer I managed to find a job. Unfortunately it was in Los Angeles, which required me to fly there and back, rent a parking space for my car, fill said car with gas, and insure said car so that if I plowed into someone else they would get compensated. Furthermore, the whole time I was in California, I still had to pay rent on my apartment in Montreal. With all these extra expenses involved in making this money, I just about broke even for the summer. Nevertheless, I thought it would be better to try to contribute to the global economy than to sit on my butt all summer, read books, maybe hang out at the law school, suck back a few cold ones (though I managed to work and do that anyway)... I told the Quebec Government of my industriousness, as the law requires me to do, thinking they would congratulate me for my effort. I thought they might say, "Jody, we like your initiative. We expect to give most of the money you earned to McGill (which I ended up doing), but we're still going to give you that allowance because you've done your chores." -- NOT!

It still made me borrow as much money as I did before, it just cut my allowance. What's more, it rubbed salt in the wound when it informed me that, in light of the fact that I was paid in U.S. currency last summer, it had recalculated the amount of the bursary to which I was entitled and that I had to remit the \$738 it overpaid me, forthwith.

Happy Birthday Little Buckaroo! The person that dreamed this system up is a genius. It seems to me that people would be much more likely to go out and pound the streets looking for jobs if they thought they would be in a situation where it would improve their financial position. This is the best case. In the worst case, the system encourages people to work for cash under the table and avoid the law. The Government was so worried about evasion of the law that it cut the taxes on cigarettes, the number one burden on our health care system yet, with regard to student loans, it seems to subscribe to a different point of view. Selah.

One of the other things that I tried to do in preparation for going to the bookstore, was to look at my course outline to determine exactly what books I needed to buy. The *Charter of Students' Rights*, s. 10(2) stipulates that:

Every instructor shall provide students during their first week of lectures with a written course outline. The information should include where appropriate:

- (a) a description of the topics to be considered in the course,
- (b) a list of required and recommended readings and other materials,
- (c) a description of the means of evaluation to be used in the course,
- (d) the instructor's office hours for students, office location and telephone number for appointments.

Well, even in the best case scenario, where you get a written course outline and not just some vague reference to the casebook's table of contents, I have yet to see an outline which contains regular office hours. I know that professors are busy people that often have to dash off to a conference, meeting or cottage retreat at a moment's notice. However, I also know they spend a good deal of time in their offices. Would it be too drafty to spend two of those hours a week sitting with the door open instead of closed? I realize that large law firms run by appointments and that it is impossible to see a lawyer without one. I also know that all the professors loved the time they spent in law firms so much that they try to emulate the law firm routine in their academic lives.

I'm being picky, I know. Most professors I know complain that their office hours are under-utilized, that they can't pick a time that is convenient for everybody, that

# TALK

making an appointment is quick, easy and convenient. Still, and you may think I'm deluding myself, I thought that the main reason that the professors were here was to teach students. Having regular office hours would certainly reinforce this view, but then again I may be deluding myself. A more practical advantage of regular office hours would be to let the wind out of the sails of the turbo-keeners.

I myself have been guilty on one or two occasions of thinking that I have some brilliant insight on whatever was going on in class at the time. Like the other turbo-keeners, I would almost poke my neighbour's eye out waving my arms wildly in the hopes of attracting the professor's attention. When the professor finally did call on me, I would launch into a long diatribe on some esoteric aspect of the law, only to find in mid-thought that I had either forgotten what the hell I was talking about or my point made absolutely no sense. At that time, since I'm not a complete sadist, I would usually excuse myself and apologize to my fellow classmates for boring them with useless drivel (I make no such apologies for *Jodytalk*, however... *caveat emptor*). On the other hand, many other turbo-keeners plow on, oblivious to the professor's yawns or to the student beside him tying a slipknot in a length of rope. If the professor had regular office hours, she could launch a preemptive strike against any keener and say, "Why don't you come see me during my office hours." The professor would be safe in the knowledge that the keener would never take them up on the offer, since the first law of the turbo-keener is never perform without an audience.

I guess the point I'm trying to make is that while I'd like office hours, if the professor is available some time outside of class, it satisfies the spirit of office hours and is OK. On the other hand, not handing out a course outline is unacceptable, but professors keep doing it unless students demand otherwise. Speak out!

*Jody Berkes is a third year law student who would like to thank the Quid Novi for making him the recipient of the first annual Ambassador Raoul Duke Scholarship. His column appears weekly in the Quid Novi.*

(Continued from page 1)

in exactly that state of disarray. When Tobias Q.C. telephoned with the invitation, I did not forget, I am pleased to think, my training as a barrister, and I asked the following question, namely, "What on earth am I going to talk to them about?" He snapped into his most silken mode: "Old chap," he said soothingly, "Just talk to them about anything you like, but it's in order to introduce a little levity." Well, it has been three years since I last practised at the Bar, but when I did practise, that sort of brief was known colloquially as a "flick pass", and there was a well established etiquette for dealing with it: flick it back to whomever sent it; flick it on to some other poor unfortunate; but at all costs flick it away from yourself before what is now the sounds of something ticking becomes the sound of something exploding. Alas, and as you can see for yourselves, when one becomes a Judge, it is not only in respect of one's income that the buck stops.

So what's topical? Well, if I were a Junior and even more so if I were a pupil, I would be more than just a little worried by the inquiry by the Trade Practices Commission which is about to break over the Bar, and I would be just as worried by the accompanying campaign against the Bar which is so obviously taking shape. So, I thought that I would say something about those matters. I must at once pause and follow with due reverence in the footsteps of the learned President of the Court of Appeal who is, after all, my second chief work supervisor, and say that the author's views are the author's own.

Let us begin, then, with a reference back to the Monroe Doctrine. Not, of course, for the version for which the late President James Monroe is famous, but the alternative version for which the much later Miss Marilyn Monroe was responsible.

An interviewer once asked Miss Monroe for her views about sex. He did not put the question in the form of the question that has made, if not quite a living national treasure at least a living professional anecdote out of at least one member of this Bar, but in the form:

## Advice to Future Lawyers

"What do you think about sex?" Miss Monroe was equal to the occasion, although she did not answer in the preferred forms for a good witness, which is to say she did not reply: "Yes," or "No" or even "I don't know" or "I can't remember." She replied simply: "I think it's here to stay."

I tell you that because it seems to me that whenever judges and barristers start talking about the rule of law, or the Bench or the Bar, they always show, so worldly-wise and sophisticated as they think themselves to be, a truly childlike faith in that later version of the Monroe Doctrine. Certainly, there might have to be a change of nuance here, or some silly

seems to me that that is a very dangerous sentiment to have swirling around the Bar in coming days.

The second factor is, of course, the joining by, as it would seem, at least some of the mega-partners of at least some of the mega-firms, in the new campaign against the Bar, bearing in mind always that such a campaign against the Bar will necessarily develop, if successful, into a campaign against the independence of the Bench, and so against the very foundations of the rule of law itself.

The importance of this adherence of these mega-partners to the anti-Bar, or as I would prefer to call it, this anti-rule of law campaign, is that they have the capacity to give that campaign a veneer -- they could never give it any more than that -- of respectability and even of responsibility which the campaign does not have and must not be allowed to pass itself off as having in fact.

So, let us take, like good barristers, a closer measure of the enemy, starting with those golden oldies among the new campaigners, the politicians, academics and journalists.

The measure of the politicians can be taken from something said the other day by a leading Government spokesman. He rebuked another Member by saying of him: "He prefers to live in the world of outmoded symbols rather than in the real world." The real world, mind you, "of triple-A ratings and the economy."

The kindest things that can be said about that level of thinking is that it is the ultimate in cynicism, regard being had to Oscar Wilde's definition of a cynic as somebody who knows the price of everything and the value of nothing.

The measure of the academic members of the new campaign -- and there would be no show without this particular Punch -- is best taken in a programme note in which the English playwright Robert Bolt describes as follows a character in one of his plays:

"A studious unhappy face lit by

(Continued on page 7)

It is true that a couple of years ago greed actually won the Academy Award for Wall Street...

little appeasement about shaking hands there; but in the end, "I think it's here to stay."

Well, I'm not so sure. I say so because, in my view, there are present, this time around, two new factors which are very worrying.

The first is the resentment which has been generated by the undoubted fact that, broadly speaking, the Bar has put off very successfully its critics of the last 12 or 15 years or so. Anyone who read the editorial which appeared in one of last week's *Heralds* under the heading, "*Lawyers: this time get it right*" will have remarked on the undisguised bile and venom with which that editorial expressed resentment at that apparent success of the Bar. It

(Continued from page 6)

the fire of banked-down appetite. He is an academic, hounded by self-doubt to be in the world of affairs and longing to be rescued from himself."

Quite so.

The measure of the journalists and so-called "media personalities" can be taken as a paradox. They call themselves the Fourth Estate, and then have the nerve to criticise us for being supposedly attached to legal fictions. The notion of their being a Fourth Estate is not only ridiculous in itself, but involves at least as great an appeal to legal fiction as could ever be laid at the doors of John Doe and Richard Roe.

The measure of the new campaigners, the mega-partners, can be taken in one simple word: greed. Naturally they would never put it so bluntly. They prefer to call it "the dynamics of microeconomic reform"; "economies of scale"; or, if the mask slips just a little, "client billable hours." The fact remains, to paraphrase Gertrude Stein, that "greed is greed is greed." It is true that a couple of years ago greed actually won the Academy Award for *Wall Street*, but anyone with eyes to see now knows that Gordon Gekko was wrong. Greed is not good; in the end greed does not work; but, in the meantime, greed can do an awful lot of damage to an awful lot of people and institutions.

That, then, is the enemy. What should be the Bar's response?

It seems to me that the answer to that question depends upon what exactly the Bar wants to achieve. If the Bar will be content, once again, merely to win the battle, then press releases and rallies and meetings might once again do the trick. But if the Bar is willing, this time around, to do something better than that, and to make for once a serious effort not only to hold the line, but actually to turn around positively the tide of opinion, then it will be necessary for the Bar to rethink carefully both the theory and the practice of some basic principles.

Judges and barristers are very good at talking about the rule of law. The phrases trip easily off the tongue, and

they sound good. Thus we talk about a body of independent and principled judicial decision; or about the searching out of the truth in adversarial proceedings conducted by fearless and independent barristers. Unfortunately, most of us stop at that point, without acknowledging and thinking through the undoubted fact that there lies behind that notion of the rule of law a series of interlocking assumptions, a breakdown in any one of which will necessarily entail a breakdown of the rule itself.

The first such assumption is that

...but anyone  
with eyes to see  
now knows that  
Gordon Gekko  
was wrong.  
Greed is not  
good; in the end  
greed does not  
work...

most people are, at least for most of the time, decent and responsible people who will choose to obey the law. It is assumed, secondly, that such people will so choose to obey the law, not from an understanding or a liking for the law, but rather because, at the end of the day, they are prepared to trust and respect the law, realising, whether by reason or only by instinct, that the law is the cement that holds together everything else in any civilised society. It is assumed, thirdly, that they will so trust and respect the law because they are prepared, at the end of the day, to trust and respect particularly the courts which administer justice

## From Justice Sully

according to the law, and the Bar which provides the principal professional support to the Courts. Fourthly and finally, it is assumed that that trust and respect will be forthcoming to, relevantly, the Bar, because of the existence in every true barrister of certain essential characteristics.

What are these essential characteristics? There are, I suggest, three of them.

The first is integrity. Integrity does not mean what you can get away with. Integrity does not mean what is included between the covers of the Bar Council's black book of rules and rulings. Integrity for a real barrister means, simply, the behaviour of a lady or a gentleman. In this context, a lady or a gentleman is not a person who speaks with an exaggerated accent and who knows, so to speak, how to eat jelly with a fork. A lady or a gentleman is a person who applies in a patient and disciplined way to the whole of life, the Golden Rule: not Lord Wensleydale's version, but the other version that speaks about treating others as we would have them treat us.

The second essential characteristic is courtesy. By that I do not mean extravagant protocol or manners. I mean what William of Wyreham meant when he said all those hundreds of years ago: "Manners maketh man." He was, of course, then safely beyond the reach of the anti-discrimination legislation, but these days he would be, no doubt, happy to comply with that legislation by adding: "and woman." It has always seemed to me that, at every point of contact in the normal course of a barrister's work, with the instructing solicitor and the client, with the witnesses, the professional opponent, and with the Court itself, simple good manners will get a simple good result, or, at the very least, will make a significant contribution to the obtaining of such a result.

The third and final of those essential characteristics is what I would call a sense of vocation. By this I do not

(Continued on page 8)

## Justice Sully's Advice

(Continued from page 7)

mean some exaggerated pietistic pose. I mean rather, and to begin with, a sense of privilege. For it is, in truth, an immense privilege to be a barrister. A barrister -- I mean, of course, a real barrister -- does not practise a trade or conduct a business; nor does he merely practise a profession. A real barrister answers a vocation and thereby follows, in a very real and fundamental sense, a calling. Not any one of us has some claim of right to that calling. It is a gift of Divine Providence, and it might, with all justice, have been given to somebody else as to you or to me. Anybody who has a grasp of that reality of privilege will naturally have a grasp of the necessary correlative, which is responsibility and duty. And it is in truth a tremendous responsibility and a tremendous duty that the barrister carries. Every time a barrister goes to Court, the good fortune, the good name, and sometimes even the liberty of the client go with him. So do his own good name and the good name of his calling.

When I speak of a sense of vocation, I have in mind a properly formed, interior disposition which holds in what I would call a prudent moral balance that sense of privilege and that sense of responsibility and duty of which I have been speaking.

A barrister who has these essential characteristics will not need any Bar Council book of rules and rulings. He will know instinctively, and, due allowance made for human frailty, will do, instinctively, the honest and upright thing according to the given circumstances.

I know that all of that must sound a bit ponderous, but I say it to all of you because I love the Bar with a passion. I practised at the Bar for twenty-seven and a half years, and I can tell you truly that I never once regretted that choice. Furthermore, I not only love the Bar, but I believe in the Bar and its special place

in the upholding of the rule of law in which, also, I believe with unwavering conviction. I do not want to live in a world where there are, so to speak, 2 motorcars in every garage and every imaginable gadget in every kitchen, but where we are all a race of slaves in those things that really matter: that is to say, in the things that touch the heart, move the mind and lift the spirit, and I believe as a matter of abiding conviction that, in the end, it is the rule of law as I have earlier spoken of it, and that rule of law alone, that can protect us against such a prospect.

I, and all who love the Bar as I do, will hope that, this time around, the Bar will try to do more, much more, than

I do not want to live in a world where there are, so to speak, 2 motorcars in every garage and every imaginable gadget in every kitchen, but where we are all a race of slaves in those things that really matter: that is to say, in the things that touch the heart, move the mind and lift the spirit...

merely hold the line one more time. If the Bar will but reassert these essential characteristics in principle, and, much more importantly, rejuvenate them in patient and consistent practice, then, I believe, the tide can indeed be turned positively around.

For those decent and responsible ordinary people of whom I earlier spoke are not stupid. They are the people who make up our juries; and anyone with jury experience at all will know that, as I say, they are not stupid. They do know a good thing when they see it, and much more importantly, they know when they are being short-changed in something

that they have a right to expect. A return, consciously and consistently, by the Bar to those essential characteristics of which I have been speaking, will not be lost on those people, and will draw back to the Bar that trust and respect and that broad community support which, also, the Bar has allowed to hemorrhage away so badly in recent times. Broad-based trust, respect and support will, on their own, give the Bar the protection it needs against those who would destroy it, and so, by necessary extension, will protect also the true independence of the Bench, and so, by necessary further extension, the very rule of law itself.

I began with an anecdote: May I conclude with a very quick game of Not-So-Trivial-Pursuit? The rules of the game are simple. I will give you two very short quotations. You might care to guess at the identity of the speaker: it is the same speaker in each case.

The first quotation is:

"The lawyer doesn't consider the practical repercussions of the application of the law. He persists in seeing each case in itself. [The lawyer] cannot understand that in exceptional times new laws are valid."

And the second:

"Let the profession be purified. Let it be employed in public service. Just as there is a Public Prosecutor let there be only..." -- "only" mark you -- "Public Defenders."

The speaker is not, as it happened, one of our politicians having an attack of the populist vapours, nor one of those knights of the woeful countenance from the world of academe, nor even one of those journalists or so-called "media personalities" who are always so sure that they have every answer to every problem if only we let them stuff their social fantasies down our throats at our own cost. It is not even one of the mega-Gekkos.

The speaker was Hitler. He was expounding his vision of the German Bar in his version of a new world order.

Food for thought isn't it?

I'll leave you to do some thinking.

# Message From Downunda

Tom Levine, exchange student at McGill Law last year sends the following kind words:

To all in second year and above:

A short message to all those who may remember an exchange student from Downunda who seemed to like CDH so much that he stayed for a whole year. Before leaving for sunny Sydney at the end of April, I tried to make my way around law school thanking everybody who had helped me to have such a fantastic year at McGill Law School last year. I hope I thanked all of the academics and administrators who were so very helpful.

There is, however, a group of people that I was unable to thank, because they were never all in one place at the same time, and they are my fellow students. To all of you reading the QUID, I would like to offer my gratitude and admiration for the wonderful community you have all created at Chancellor Day Hall. I always find it impossible to explain to people in Sydney who ask (and they certainly do ask!) "how were the other people in the law school there?". The best I can do is to say that

they were unbelievably welcoming, friendly, fun, motivated, bright, and most importantly, proud of their law school (as much as Canadians allow themselves to be proud of anything Canadian). You guys have a lot to be proud of. You live in a most beautiful city, you go to a great school, and you have such a community of spirit that any guest at the McGill law school cannot but feel honoured and, more importantly, very happy.

On the other hand, I am also glad to be home. Sydney is also a brilliant city, and with spring just beginning, there is a great feeling of the anticipation of a long, hot summer. I would like to extend a personal invitation to each and every one of you to spend a term in this great place. I can report with confidence that Ami, Sanjay and Jocelyn are all enjoying themselves immensely.

If you would like to know more about the possibilities, see Prof. Harvison Young or E-mail me here at "u2118712@csdvax.csd.unsw.edu.au". For now, however, on a glorious Monday morning, I'm off to the beach. Enjoy the winter.....

## THE JUDGEMENT

(Continued from page 1)

months of toil and that's the result. Guess you can't get more clear and to the point than that. The judges of the Supreme Court of Canada could take a lesson from these JUDGES; instead of taking a hundred pages to render a judgment, a JUDGE in this SYSTEM can do it with a single letter. But then, we are not dealing here with a system of justice. A system of justice demands that a judge's decision be explained and justified. Here, the SYSTEM requires no explanation.

In all fairness, the JUDGES are usually willing to provide an explanation for their JUDGMENT, but few parties ever seek one. The SYSTEM frowns upon it, and hey, it's bad news to go against the SYSTEM. There are a lot of obvious reasons why

explanations are seldom sought. First, the SYSTEM puts the onus on the parties to track down the explanation, which wouldn't be all that difficult if it wasn't so intimidating. And no one really knows the procedure for going about this task. Second, seeking an explanation is often futile, since JUDGES often forget why a certain JUDGMENT was rendered. Your submission is unlikely to contain any comments. And the mythical page of notes that JUDGES are encouraged to make is seldom produced. This SYSTEM, as opposed to a system of justice, prefers not to put things in writing. Finally, you might prefer to keep the whole thing anonymous. It's not an easy thing to approach an esteemed JUDGE (one for whom you probably have a lot of respect,

otherwise you wouldn't be seeking his counsel in the first place) and say to him, "Yes, your lordship, I'm the dunce. Would you be so kind as to explain precisely why it is that I am such a fool?" The SYSTEM likes anonymity, and hey, if that's the way the SYSTEM wants it, it's best to just leave it that way.

So we take our JUDGMENTS and plod on. We're not sure what we're doing right and what we're doing wrong, and we've largely given up hope that someday we'll learn the secrets of how CASES are decided. Whether or not we were "organized" or "clear and to the point" will forever remain a mystery to us. Soon we will move on, leaving the SYSTEM behind us, and finding our place in the system of justice. And we hope things will be different.

# My View On A Friday Afternoon

Christopher Richter

Nat IV

(On exchange at Laval University, Quebec)

Aunt Barb dropped me off on the shoulder of the highway shortly after noon. I walked on about ten metres and swung my bag down from my shoulder onto the asphalt. The grain elevators to the northeast marked Vegreville, two or three miles away. Grain elevators are to the Prairies what church spires are to Central Canada: symbols of hope, civilization, and past prosperity. Vegreville has three big ones. I figured this was a good omen, which I was thankful for after the pessimism of my relatives. I tucked in my shirt, turned to face the traffic and stretched out my thumb.

Vegreville is 850 kilometres from Melville (which is my domicile of origin). I didn't have to hitchhike. On this kind of vacation, I prefer the train to anything else. Especially on long runs, like the Transcontinental, the train provides an opportunity to contemplate the land through which you travel, while freeing you from the need to negotiate your own way through it. As you busy yourself playing cards, reading or dining, the country continues to roll by, separated from you by a pane of glass, connected by the constancy of steel on steel. It is when I am on the train that I come closest to believing that getting there could be half the fun. But on this particular Friday afternoon, I had few regrets about keeping my CanRail pass in my pocket and taking my chances on the highway.

As my relatives pointed out, hitchhiking is not the most prudent method

of travel. Facing the wind outside of Vegreville, I started to calculate the odds of hitching 850 km before sunset. As a backup plan, I decided that I could spend the night in Saskatoon if necessary. I was feeling optimistic.

I'll admit that this plan was partially a concession to a recurring desire to throw myself into the River of Life and see where I wash up (the Yellowhead Highway is as close to the River of Life as one gets near Vegreville). But the more logical reason for hitchhiking to Melville was that I had always wanted to see the

Grain elevators are to the Prairies what church spires are to Central Canada: symbols of hope, civilization, and past prosperity.

Gaspé.

Canada is a big country. Sometimes the abundance of geography makes it difficult to see the connections. When I told my relatives about my desire to see the Gaspé they reacted as if I had told them I wanted to see the Sphinx. While eccentric perhaps, my plan is not nearly so impractical.

It is only every five years or so that I get to travel across Canada. Understandably, I try to make the most of it. By hitchhiking to Melville, I save two

days on my CanRail pass, which I will use two weeks later to go to the Gaspé.

Wanderlust aside, it seemed important that I seize this opportunity. The last time I took the train across Canada was right before the cutbacks five years ago. We went through Banff. Via Rail no longer runs through Banff. Five years from now, a CanRail pass may not be good for much in Quebec.

Like the Canadian dream it did so much to build, rail travel in Canada has changed from a symbol of adventure and creative ingenuity into a reminder of impending loss. There is every reason to believe that, once Quebec has separated and I have received my dual citizenship, I will no longer be hitching from Vegreville in order to get to the Gaspé.

The first three cars speed past me. The limit there is 100 km/h. I looked down my arm at my thumb. Now I don't have big hands but, as the fourth car approached, I considered squishing it between my thumb and fist. I decided to reserve such measures for later in the day and stick to my initial optimism. As my friend Jim in Vancouver likes to say (between beers), "If you lead a good clean life, good things happen." The fifth car belonged to Joe, a homesick heavy-machine operator racing home from Fort St. John. Joe's home is in Glace Bay, Cape Breton.

Watching the Prairie sunset and waiting for my cousin to come and take me the last 50 km to Melville, I am feeling pretty optimistic about my country and my future. Maybe I'll hitch from Gaspé to Cape Breton. An extended hand and a little trust goes far.

## Environmental Law Association of McGill L'Association de Droit environnemental de McGill

### Next Meeting:

Wednesday, September 21st, 12h30, Room 102, OCDH.

Introductions / Overview of Activities / Election of Officers / Used Book Sale wrap-up.

Update on Future Projects: Community Environmental Projects (legal research opportunities), Invited Speakers (Fall/Winter/Spring), January Used Book Sale, Environmental Law Careers Day (March 1995)

### Saturday Bicycle Trip:

Saturday, September 24th, 13h00, meet at the front steps of Old Chancellor Day Hall.

Historical/enviro-legal (!) tour, mainly on bicycle paths through the

federal and municipal "linear park" systems, running from just after lunch until around supper-time... or perhaps barbecue time... the Old Port, Lachine Canal, Atwater Market, Town of Lachine, the Lachine Rapids, St. Lawrence River and Ville LaSalle. This part of Montreal was the birthplace of North American industry - and it has the pollution problems to prove it! Yet the various levels of government are finally acknowledging the region as a valuable resource for recreation, residential use and, after many years of neglect and decay, its advantages for the reintroduction of modern light industry.

Pace: definitely "leisurely", with numerous stops for ice cream, food, "refreshments", etc... So, if you need a bicycle, go out and beg, borrow or... well, at least beg or borrow a bicycle!